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**FEDERAL ELECTION COMMISSION**

999 E Street, NW

Washington, DC 20463

**CELA**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6613

DATE COMPLAINT FILED: July 24, 2012

DATE OF NOTIFICATION: July 31, 2012

November 5, 2012<sup>1</sup>

DATE OF LAST RESPONSE: August 16, 2012

January 3, 2013

DATE ACTIVATED:

September 19, 2012

EXPIRATION OF STATUTE OF LIMITATIONS:  
July 13, 2017

ELECTION CYCLE: 2012

**COMPLAINANT:**

Hoekstra for Senate<sup>2</sup>

**RESPONDENTS:**

Prosperity for Michigan and Jennifer Satterlee in  
her official capacity as treasurer  
Jennifer Satterlee in her personal capacity  
The American Way – Durant 2012 and Walter P.  
Czarnecki in his official capacity as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 431(13)(A)  
2 U.S.C. § 432(i)  
2 U.S.C. § 434(b)  
2 U.S.C. § 434(g)(1)  
11 C.F.R. § 100.12  
11 C.F.R. § 104.3(a)  
11 C.F.R. § 104.4(c)  
11 C.F.R. § 104.7

**INTERNAL REPORTS CHECKED:**

Commission Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

N/A

<sup>1</sup> Due to an administrative oversight, this office notified the Durant Committee of the questions raised regarding possible coordination with Prosperity for Michigan on November 5, 2012.

<sup>2</sup> On December 12, 2012, Complainant asked the Commission to dismiss the Complaint as a matter of prosecutorial discretion because Respondents were unsuccessful in opposing Pete Hoekstra for the 2012 Michigan Republican Senate Nomination and had limited financial resources. See Letter from Charles R. Spies, Counsel for Hoekstra for Senate, to Jeff S. Jordan, FEC (Dec. 12, 2012) ("Rqst for Dismissal").

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I. INTRODUCTION

This matter involves allegations that Prosperity for Michigan, an independent expenditure-only political committee, knowingly and willfully violated the Federal Election Campaign Act of 1971, as amended (the "Act") by failing to disclose any receipts or disbursements in its original July 2012 Quarterly Report, filed July 13, 2012. Compl. at 1-2 (July 24, 2012). The Complaint contends that Prosperity for Michigan intentionally withheld disclosure of its contributors to shield their identities when distributing a television attack ad against Hoekstra that was allegedly aired on July 21, 2012 ("Anti-Hoekstra Ad").<sup>3</sup> *Id.* at 1. The Complaint alleges that Prosperity for Michigan then filed an amended report, disclosing \$188,500 in contributions on July 23, 2012. *Id.* at 2.

The Complaint also alleges that Prosperity for Michigan failed to timely disclose its activities when it filed a 48-hour independent expenditure report instead of a 24-hour report, as required by Commission regulations. *Id.* at 4. The Complaint further alleges that Prosperity for Michigan failed to include employer and occupation information for seven of the nine individual contributors in its amended 2012 July Quarterly Report. *Id.* at 2. Finally, the Complaint posits that similarities between the Prosperity for Michigan ad and an ad run by the Clark Durant campaign committee, The American Way – Durant 2012 ("Durant Committee"), suggest that Prosperity for Michigan may have coordinated its ad with, and thus made an unreported in-kind contribution to, the Durant Committee. *Id.* n.4.

Prosperity for Michigan's treasurer, Jennifer Satterlee, submitted an affidavit acknowledging that Prosperity for Michigan failed to comply with some of the reporting

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<sup>3</sup> Based on the allegation that this reporting violation was knowing and willful, the Complaint argues that Jennifer Satterlee should be held personally liable under the Commission's *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3 (Jan. 3, 2005) ("Enforcement Treasurer Policy").

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1 provisions of the Act and Commission regulations; however, she denies that she acted knowingly  
2 and willfully and contends that Prosperity for Michigan's mistakes were the result of  
3 inexperience with filing Commission reports. Jennifer Satterlee Aff. ¶¶ 4.d, 6 (Aug. 8, 2012).  
4 Prosperity for Michigan also denies that it failed to timely file the independent expenditure report  
5 and denies that it coordinated with the Durant Committee. Satterlee Aff. ¶¶ 5, 7.

6 The Durant Committee denies that there was any coordination with Prosperity for  
7 Michigan. Durant Committee Resp. at 2 (Jan. 3, 2013). To the extent that its campaign ad was  
8 similar to Prosperity for Michigan's Anti-Hoekstra Ad, the Durant Committee claims these  
9 similarities can be explained by "the longstanding and consistent objections" that many people  
10 had with Pete Hoekstra's record, which were highly publicized. *Id.* (emphasis in original).

11 As discussed below, the Office of the General Counsel recommends that the Commission  
12 find reason to believe that Prosperity for Michigan violated 2 U.S.C. § 434(b)(2) by failing to  
13 report contributions, and authorize pre-probable cause conciliation with Prosperity for Michigan.  
14 We also recommend that the Commission find no reason to believe that Prosperity for Michigan  
15 violated 2 U.S.C. § 434(g)(1) by allegedly failing to timely file an independent expenditure  
16 report. We further recommend that the Commission find no reason to believe that Prosperity for  
17 Michigan violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the Durant  
18 Committee via coordinated expenditures, and find no reason to believe that the Durant  
19 Committee violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive contribution.  
20 Finally, we recommend that the Commission dismiss the allegation that Prosperity for Michigan  
21 violated 2 U.S.C. § 434(b)(3) by failing to provide identifying information of contributors but  
22 send a letter of caution.

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**II. FACTUAL AND LEGAL ANALYSIS**

Prosperity for Michigan is an independent expenditure-only political committee. *See* Prosperity for Michigan Statement of Organization (Apr. 6, 2012). Jennifer Satterlee is its treasurer. *Id.* The American Way – Durant 2012 is the principal campaign committee of Clark Durant, who was a Republican candidate for U.S. Senate in Michigan's primary election in 2012. *See* The American Way – Durant 2012 Statement of Organization (Aug. 31, 2011). Durant lost the primary election to Pete Hoekstra on August 7, 2012. Rqst. for Dismissal.

**A. Alleged Failure to Report Receipts**

Although Prosperity for Michigan had received contributions totaling \$188,500 between April and June 2012, its July Quarterly Report disclosed no receipts for the relevant time period. *See* Prosperity for Michigan 2012 July Quarterly Report (July 13, 2012). In its Response, Satterlee claims that the failure to report these receipts "was an error on my part because I thought since the Committee is an independent expenditure only committee, that I had to report independent expenditures *only*." Satterlee Aff. ¶ 4.d (emphasis in original). An intern at the McLellan Law Offices, *see* Satterlee Aff. ¶ 1, Satterlee had no prior experience as a political committee treasurer and limited knowledge of campaign finance laws. After speaking to an analyst from the Reports Analysis Division ("RAD"),<sup>4</sup> Satterlee realized that Prosperity for Michigan should have reported contributions as well as expenditures and filed an amended report disclosing the \$188,500 in contributions on July 23, 2012. Satterlee Aff. ¶ 4.d; Prosperity for Michigan Amended July 2012 Quarterly Report (July 23, 2012).

The Act provides that a political committee must disclose the total amount of all receipts, including contributions, received for the reporting period and calendar year. *See* 2 U.S.C.

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<sup>4</sup> Telephone Call from Jennifer Satterlee, Prosperity for Michigan, to Sarah Juris, RAD, July 23, 2012 (12:26 PM).

1 § 434(b)(2). Independent expenditure-only political committees may accept unlimited  
2 contributions and contributions from corporations and labor organizations, but they are subject to  
3 the reporting requirements of 2 U.S.C. § 434(b). *See SpeechNow.org v. FEC*, 599 F.3d 686, 697-  
4 98 (D.C. Cir. 2010) (holding that such committees must comply with the reporting requirements  
5 of the Act, including the obligation to report contributions that the committees accept); Advisory  
6 Op. 2010-11 (Commonsense Ten).

7 As an independent expenditure-only political committee registered with the Commission,  
8 Prosperity for Michigan was required to comply with the reporting requirements of 2 U.S.C.  
9 § 434(b). In its original July 2012 Quarterly Report, however, Prosperity for Michigan failed to  
10 disclose any of its receipts and to identify contributors who made contributions in excess of  
11 \$200. Prosperity for Michigan did not make the required disclosures under section 434(b)(2)  
12 until it amended the July Quarterly Report on July 23, 2012. Accordingly, we recommend that  
13 the Commission find reason to believe that Prosperity for Michigan violated 2 U.S.C.  
14 § 434(b)(2).

15 Under the Commission's Enforcement Treasurer Policy, a treasurer may be personally  
16 liable for violations of the Act where the treasurer: (1) "knowingly and willfully violated the Act  
17 or Commission regulations;" (2) "recklessly failed to fulfill the duties imposed by a provision of  
18 the Act or regulations that applies specifically to treasurers;" or (3) "intentionally deprived  
19 himself or herself of the operative facts giving rise to a violation." 70 Fed. Reg. at 6. A knowing  
20 and willful finding requires that the respondent knew that his or her action was unlawful. *See*  
21 *AFL-CIO v. FEC*, 628 F.2d 97, 101-02 (D.C. Cir. 1980).

22 Satterlee — an intern, not a lawyer — has submitted sworn statements that the violations  
23 resulted from her lack of knowledge of campaign finance laws. Satterlee Aff. ¶¶ 4.d, 6. We

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1 have no credible information suggesting that Satterlee intentionally sought to violate the Act or  
2 recklessly sought to avoid fulfilling a known legal obligation. Accordingly, we recommend that  
3 the Commission find no reason to believe that Satterlee knowingly and willfully violated 2  
4 U.S.C. § 434(b) in her personal capacity.

5 **B. Alleged Failure to Provide Identifying Information for Contributors**

6 In the July 2012 Quarterly Report, Prosperity for Michigan failed to provide employer  
7 and occupation information for seven of the nine individuals who made contributions in excess  
8 of \$200. A political committee must identify each person who makes a contribution having an  
9 aggregate amount in excess of \$200 within the calendar year, together with the date and amount  
10 of any such contribution. *See* 2 U.S.C. § 434(b)(3)(A). When identifying an individual who is a  
11 contributor, a political committee must include the individual's name, mailing address,  
12 occupation, and employer. *See id.* § 431(13)(A); 11 C.F.R. § 100.12. If a treasurer of a political  
13 committee is able to demonstrate that he or she has exercised best efforts to "obtain, maintain,  
14 and submit" such information, however, the committee shall be considered in compliance with  
15 the Act. 2 U.S.C. § 432(i); 11 C.F.R. § 104.7(a).<sup>5</sup>

16 Although its Response does not provide any specific information as to how Prosperity for  
17 Michigan met the requirements for exercising best efforts under 11 C.F.R. § 104.7, it appears  
18 that the Committee sought to obtain required contributor information as evidenced by Satterlee's  
19 conversations with RAD on July 26, 2012, during which she described her attempts to obtain

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<sup>5</sup> To demonstrate "best efforts," written solicitations for contributions must include a clear request for the required contributor information. 11 C.F.R. § 104.7(b). In addition, the solicitation must include an accurate statement of federal law regarding the collection and reporting of individual contributor identification. *Id.* For each contribution received aggregating in excess of \$200 per calendar year that lacks such information, the committee treasurer must make at least one effort to obtain the information no later than 30 days after the receipt of the contribution. *Id.* § 104.7(b)(2).

1 employer and occupation information from contributors.<sup>6</sup> Moreover, Prosperity for Michigan  
2 provided the missing information in an amended July 2012 Quarterly Report filed on October 4,  
3 2012.

4 Under these circumstances, we do not believe that the Commission should further pursue  
5 this matter. *See* MUR 6438 (Art Robinson for Congress) (dismissing allegation that committee  
6 failed to provide required contributor information where committee failed to satisfy all elements  
7 of best efforts but demonstrated that it had made improvements to comply with disclosure  
8 requirements); MUR 6031 (Hagan) (same). Accordingly, we recommend that the Commission  
9 dismiss the allegation that Prosperity for Michigan violated 2 U.S.C. § 434(b)(3) and send a  
10 cautionary letter. *See Heckler v. Chaney*, 470 U.S. 721 (1985).

11 **C. Alleged Failure to Timely File Independent Expenditure Reports**

12 According to the Complaint, on July 21, 2012, Prosperity for Michigan began airing the  
13 Anti-Hoekstra Ad attacking Hoekstra and supporting the election of Durant. Compl. at 2; *see*  
14 *also* <http://prosperityformichigan.com/> (last visited Nov. 11, 2012). On July 23, 2012, Prosperity  
15 for Michigan filed a "48-Hour Report of Independent Expenditures," disclosing \$288,628.00 in  
16 independent expenditures made on July 21, 2012, in support of Durant. *See* Prosperity for  
17 Michigan 48-Hour Report of Independent Expenditures (July 23, 2012). According to this  
18 Report, Prosperity for Michigan paid Media Ad Ventures, in Springfield, Virginia, a total of  
19 \$275,000 for the purpose of airing a "TV Ad." *Id.* Because the July 23 Report indicates that  
20 Prosperity for Michigan made its independent expenditure on July 21, 2012, the Complaint  
21 alleges that Prosperity for Michigan started airing the Anti-Hoekstra Ad on July 21 and therefore  
22 failed to timely file the report. Compl. at 2.

<sup>6</sup> Telephone Call from Jennifer Satterlee, Prosperity for Michigan, to Sarah Juris, RAD, July 26, 2012, 12:26 PM.

1 The Response claims that Prosperity for Michigan began airing the Anti-Hoekstra Ad on  
2 July 23, 2012. Satterlee Aff. ¶ 5. This contention is supported by a news report. Nate Reens,  
3 *Super PAC Money Enters Republican U.S. Senate Primary as Group Slams Pete Hoekstra*,  
4 MLIVE (July 23, 2012),  
5 [http://www.mlive.com/news/grandrapids/index.ssf/2012/07/super\\_pac\\_money\\_enters\\_republi.ht](http://www.mlive.com/news/grandrapids/index.ssf/2012/07/super_pac_money_enters_republi.ht)  
6 [ml](#) ("Reens article."). Satterlee contends that Prosperity for Michigan filed its Reports of  
7 Independent Expenditures on July 23 and 24, 2012, within 24 hours of when the ad aired and that  
8 they were therefore timely. Satterlee Aff. ¶ 5. Satterlee claims that her mistake was that she  
9 checked the "48-hour report" box on the relevant Commission form. *Id.* ¶ 4.f.

10 Under 2 U.S.C. § 434(g)(1)(A), a person that makes independent expenditures  
11 aggregating \$1,000 or more after the 20th day, but more than 24 hours before the date of an  
12 election, must file a report describing such expenditures within 24 hours. Michigan held its  
13 primary election on August 7, 2012.<sup>7</sup> Compl. at 2. Under 11 C.F.R. § 104.4(c), a 24-Hour  
14 Report of Independent Expenditure must be filed "the day following the date on which a  
15 communication is publicly distributed or otherwise publicly disseminated." *See also* Federal  
16 Election Commission, *Campaign Guide for Nonconnected Committees* at 72 (2008) (stating that,  
17 when completing a Schedule E, the date that an independent expenditure is "made" is the date  
18 that the expenditure has been "publicly disseminated"). Prosperity for Michigan, therefore,  
19 should have used the date that the Anti-Hoekstra Ad aired when providing the date for the  
20 itemized expenditure in its Report.

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<sup>7</sup> Regardless of whether Prosperity for Michigan began airing the Anti-Hoekstra Ad on July 21 or July 23, 2012, Prosperity for Michigan was required to file a 24 Hour Report of Independent Expenditure because the ad would have aired less than 20 days before the primary election.



1 Despite Prosperity for Michigan's apparent misunderstanding, however, Satterlee's  
2 contention that the Report was timely filed is supported by publicly available information. At  
3 least one news report confirms that Prosperity for Michigan began airing the Anti-Hoekstra Ad  
4 on July 23, 2012, the same day that the ad was published on YouTube. *See* Reens article, *supra*;  
5 [http://www.youtube.com/watch?v=TLpVpEtU5yg&feature=em-share\\_video\\_user](http://www.youtube.com/watch?v=TLpVpEtU5yg&feature=em-share_video_user) (last visited  
6 Nov. 13, 2012).

7 Thus, it appears that Prosperity for Michigan made the requisite disclosures on a timely  
8 basis and well before the primary election, and we recommend that the Commission find no  
9 reason to believe that Prosperity for Michigan violated 2 U.S.C. § 434(g)(1)(A).

10 **D. Alleged Coordination between Prosperity for Michigan and the Durant**  
11 **Committee**  
12

13 The Complaint notes that Prosperity for Michigan's Anti-Hoekstra Ad is "strikingly  
14 similar" to an ad, entitled "18 Years," paid for and authorized by the Durant Committee ("18  
15 Years Ad") that began running at approximately the same time. Compl. at 2 n.4.<sup>8</sup> The

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<sup>8</sup> Publicly available information appears to show that the Durant Committee published its television ad, "18 Years," on YouTube on July 22, 2012. *See* [http://www.youtube.com/watch?v=vd5g3\\_mkH-I&feature=em-share\\_video\\_user](http://www.youtube.com/watch?v=vd5g3_mkH-I&feature=em-share_video_user) (last visited Nov. 13, 2012). The ad includes the following audio text:

I'm Clark Durant and I approve this message.  
Eighteen years in Washington changed Congressman Pete Hoekstra.  
Hoekstra voted for thousands of wasteful earmarks spending projects costing us billions.  
He voted five times to raise his own pay.  
And he voted for the \$700 Billion Wall Street Bailout.  
No wonder Hoekstra voted to increase the federal debt ceiling to over \$11 trillion dollars.  
Congressman Pete Hoekstra, he can't change Washington because he is Washington.

*Id.* Publicly available information as well as the Response indicates that Prosperity for Michigan aired the Anti-Hoekstra Ad on July 23, 2012, the next day (notwithstanding the allegation in the Complaint that it aired July 21, 2012). *See* [http://www.youtube.com/watch?v=TLpVpEtU5yg&feature=em-share\\_video\\_user](http://www.youtube.com/watch?v=TLpVpEtU5yg&feature=em-share_video_user) (last visited Dec. 3, 2012). That ad includes the following audio text:

1 Complaint concludes that “[s]uch marked similarities raise serious questions about coordination  
2 between Prosperity for Michigan and Durant’s official campaign.” *Id.*

3 The Durant Committee contends that “there was NO coordination between the Durant  
4 campaign and the [Prosperity for Michigan] advertising efforts.” Durant Committee Resp. at 2  
5 (emphasis in original). The Committee claims that the criticism of Pete Hoekstra’s record on  
6 “earmarks, raising pay, voting for bailouts and raising debt, and raising the debt ceiling” was  
7 well-documented in and drawn from the public record. *Id.* According to the Committee, during  
8 Michigan’s 2010 gubernatorial race, in which Hoekstra and Michigan Attorney General Mike  
9 Cox both ran as candidates, Cox raised these same criticisms against Hoekstra. *Id.*<sup>9</sup> During  
10 Durant’s 2012 campaign, Durant was therefore repeating the same objections that many have

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Washington needs reform.  
Yet for 18 years Pete Hoekstra helped cause the problems.  
Voting for millions in earmarks.  
Raising his own pay.  
Adding trillions to the debt.  
Raising the debt ceiling repeatedly.  
Clark Durant is a true reformer.  
Who’ll fight to end Wild Spending and Earmarks.  
Stop Obamacare, Reject debt ceiling hikes.  
Pete Hoekstra can’t fix Washington. He’s part of the problem.  
Clark Durant will.  
Prosperity for Michigan PAC is responsible for the contents of this ad.

<sup>9</sup> We identified two ads prepared by Cox’s campaign that contain some of the topics present in the 18 Years Ad and the Anti-Hoekstra Ad. One ad, entitled “Bridge,” stated:

Michigan needs a bridge to prosperity. What bridges does Pete Hoekstra build? In Congress, Hoekstra co-sponsored the bridge to nowhere. Worse, he built a bridge for Wall Street voting for the Bailout. Hoekstra voted to increase spending by \$1 trillion dollars. Congressman Hoekstra is making big government bigger. Mike Cox fights it head on. Cox led the fight against Obama Care, battled Granholm and stopped Blue Cross in their tracks. Tough enough to lead Michigan. Mike Cox for governor.

See [http://www.youtube.com/watch?v=IM2fCHzDhgQ&feature=em-share\\_video\\_in\\_list\\_user&list=UUxJa-EGos5ZZIKpgvJ1GBGA](http://www.youtube.com/watch?v=IM2fCHzDhgQ&feature=em-share_video_in_list_user&list=UUxJa-EGos5ZZIKpgvJ1GBGA). The other ad, entitled “Blueprint,” stated:

Congressman Hoekstra follows the big government blueprint. He voted for the Wall Street Bailout and grew the budget by a trillion dollars. Even funding a lobster institute. Hoekstra gave Congress more money to spend. Expanding our debt limit an additional five trillion. Then he pushed a multibillion dollar tax hike. As Attorney General, Mike Cox did more with less, cutting his office personnel even as workload increased. Tough enough to lead Michigan, Mike Cox for Governor.

See [http://www.youtube.com/watch?v=1eKjP5m9EF4&feature=em-share\\_video\\_in\\_list\\_user&list=UUxJa-EGos5ZZIKpgvJ1GBGA](http://www.youtube.com/watch?v=1eKjP5m9EF4&feature=em-share_video_in_list_user&list=UUxJa-EGos5ZZIKpgvJ1GBGA).

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1 long made against Hoekstra's voting record in Congress. *Id.* The Durant Committee specifically  
2 cites to one of its own campaign ads that aired in February 2012 that purportedly contains similar  
3 language to the Anti-Hoekstra Ad that was aired in July 2012.<sup>10</sup>

4 Satterlee denies any personal knowledge of coordination between Prosperity for  
5 Michigan and the Durant Committee: "[t]o the best of my knowledge there has never been any  
6 kind of coordination between Prosperity for Michigan and 'The American Way,' Clark Durant's  
7 official campaign." Satterlee Aff. ¶ 7.

8 The Act provides that no person may make a contribution, including an in-kind  
9 contribution, to a candidate and his authorized political committee with respect to any election  
10 for federal office which, in the aggregate, exceeds \$2,500. 2 U.S.C. § 441a(a)(1)(A).<sup>11</sup> In  
11 addition, no candidate or political committee may knowingly accept an excessive contribution.  
12 *See id.* § 441a(f). The Act defines contributions as, *inter alia*, expenditures by any person "in  
13 cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his  
14 authorized political committees, or their agents . . . ." *Id.* § 441a(a)(7)(B)(i). A communication  
15 is coordinated with a candidate, an authorized committee, a political party committee, or agent  
16 thereof if it meets a three-part test: (1) payment for the communication by a third party; (2)

<sup>10</sup> The Durant Committee's February 2012 ad includes the following audio text:

Congressman Pete Hoekstra claims to know a bit about China.  
Does he know the Chinese word for Hypocrisy?  
Hoekstra attacks Debbie Stabenow for excessive spending.  
But like Stabenow, Hoekstra voted to increase the debt ceiling and spending by trillions of dollars.  
And Hoekstra voted for the Wall Street Bailout.  
I'm Clark Durant and I approve this message. I'm tired of politicians who put America at risk.

See [http://www.youtube.com/watch?v=9I6kULeaW\\_U&feature=em-share\\_video\\_in\\_list\\_user&list=UU\\_tm5PitrgA\\_mleTpT6YKsg](http://www.youtube.com/watch?v=9I6kULeaW_U&feature=em-share_video_in_list_user&list=UU_tm5PitrgA_mleTpT6YKsg)

<sup>11</sup> See also *Price Index Adjustments for Contribution and Expenditure Limits and Lobbyist Bundling Disclosure Threshold*, 76 Fed. Reg. 8368, 8369 (Feb. 14, 2011) (adjusting section 441a(a)(1)(A)'s limit for inflation to \$2,500 for 2011 and 2012).

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1 satisfaction of one of four "content" standards of 11 C.F.R. § 109.21(c); and (3) satisfaction of  
2 one of six "conduct" standards of 11 C.F.R. § 109.21(d). *See* 11 C.F.R. § 109.21.

3 The Prosperity for Michigan ad satisfies the payment and content prongs of the  
4 coordination regulation.<sup>12</sup> The conduct prong, however, has not been satisfied.

5 The Complaint's basis for an inference of coordination is the similarity of the Durant  
6 Committee and Prosperity for Michigan's ads. First, the ads address the same topics: Hoekstra's  
7 18 years in Congress, his support for earmarks, raising his own pay, raising the federal debt,  
8 increasing the federal debt ceiling, and his failure to change Washington. Second, the ads  
9 present the topics in roughly the same order, except that the Durant Committee's ad also  
10 discusses the federal bailout of Wall Street. Third, they were aired at nearly the same time — the  
11 Durant Committee published the 18 Years Ad on YouTube on July 22, 2012, and Prosperity for  
12 Michigan published the Anti-Hoekstra Ad the next day on July 23, 2012. Fourth, while the  
13 Durant Committee claims that same criticisms made against Pete Hoekstra in the 18 Years Ad  
14 and the Anti-Hoekstra Ad repeated similar critiques made long before these ads were distributed  
15 in July 2012, we have not found any other materials that are the same in approach, timing and  
16 content as these two ads. *See supra* nn.8-9. Fifth, while Prosperity for Michigan's treasurer  
17 denies that coordination had taken place, her denial was not based upon personal knowledge and  
18 thus appears to be inadequate to demonstrate that there was no coordination.

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<sup>12</sup> First, Prosperity for Michigan does not dispute that it made expenditures to air the Anti-Hoekstra Ad. Second, the Ad satisfies the content prong because it identifies both Clark Durant and Pete Hoekstra, who were both candidates for U.S. Senate, and was broadcast on television in Michigan on or about July 23, 2012, 15 days before Michigan's primary election held on August 7, 2012. *See* 11 C.F.R. § 109.29(c)(4). Thus, the Ad qualifies as a public communication referring to a clearly identified candidate distributed within 90 days of an election. In addition, Prosperity for Michigan filed an Independent Expenditure Report in connection with the Anti-Hoekstra Ad, which by definition is only required for an expenditure that expressly advocates the election or defeat of a clearly identified candidate. *See* 2 U.S.C. § 431(17).

1           The similarity between the two ads is indeed striking, which in our view *could* provide a  
2   sufficient basis for a reason to believe finding. But here, the Durant Committee has submitted a  
3   response — reviewed and affirmed by its Campaign Manager in a sworn declaration — stating  
4   definitively that “there was NO coordination between the Durant campaign and [Prosperity for  
5   Michigan] advertising efforts” and that the two ads repeated some of the same criticisms made  
6   against Hoekstra long before these ads were aired in July 2012. Durant Committee Resp. at 2  
7   (emphasis in original). On the strength of this sworn and categorical declaration, we believe that  
8   there is insufficient information to demonstrate that the Anti-Hoekstra Ad was a coordinated  
9   communication under section 109.21. Accordingly, we recommend that the Commission find no  
10   reason to believe that Prosperity for Michigan made, and the Durant Committee accepted, an  
11   excessive in-kind contribution in violation of 2 U.S.C. § 441a(a), (f).


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**IV. RECOMMENDATIONS**


1. Find reason to believe that Prosperity for Michigan and Jennifer Satterlee in her official capacity as treasurer violated 2 U.S.C. § 434(b)(2);
2. Dismiss with caution the allegation that Prosperity for Michigan and Jennifer Satterlee in her official capacity as treasurer violated 2 U.S.C. § 434(b)(3);
3. Find no reason to believe that Jennifer Satterlee in her personal capacity knowingly and willfully violated 2 U.S.C. § 434(b);
4. Find no reason to believe that Prosperity for Michigan and Jennifer Satterlee in her official capacity as treasurer violated 2 U.S.C. § 434(g)(1) and 11 C.F.R. § 104.4(c);
5. Find no reason to believe that Prosperity for Michigan and Jennifer Satterlee in her official capacity as treasurer violated 2 U.S.C. § 441a(a);
6. Find no reason to believe that The American Way – Durant 2012 and Walter P. Czarnecki in his official capacity as treasurer violated 2 U.S.C. § 441a(f);
7. Enter into conciliation with Prosperity for Michigan and Jennifer Satterlee in her official capacity as treasurer prior to a finding of probable cause a
8. Approve the attached Factual and Legal Analyses; and

9. Approve the appropriate letters.

7/12/13  
Date

  
Daniel A. Petalas  
Associate General Counsel  
For Enforcement

  
Mark Shonkwiler  
Assistant General Counsel

  
Jin Lee  
Attorney

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